

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of
Inventor(s): Mills

Group Art Unit: 1754

415
8.15.34

App'n Ser. No.: 09/009,455

Examiner(s): Kalafut for the Secret Committee

Filing Date: 01/20/1998

Title: HYDRIDE FUEL AND EXPLOSIVE

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Hand Carried – 8th Floor CP3

May 23, 2003

**COPY OF RESPONSE TO OFFICE ACTION AND
INFORMATION DISCLOSURE STATEMENT FILED MARCH 10, 2003
AND SUPPLEMENTAL RESPONSE**

Hon. Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Examiner Stephen Kalafut telephoned the undersigned on May 21, 2003 to request a copy of Applicant's most recent Response, filed on March 10, 2003. Examiner Kalafut explained that he was taking over prosecution of the present application from the originally assigned Examiner, Wayne Langel, and that he could not find a copy of Applicant's March 10, 2003 Response in the file.

Copies of Applicant's March 10 Response, Information Disclosure Statement filed with that Response, and filing receipt are submitted herewith. The Examiner agreed, however, that the numerous articles listed on the Information Disclosure Statement submitted with the March 10, 2003 Response did not have to be resubmitted since identical copies were filed in Applicant's copending applications. Should Examiner Kalafut decide he does want additional copies of the articles filed in this case, Applicant will gladly provide them.

In view of the unfortunate circumstances surrounding Examiner Kalafut's replacement of Examiner Langel in this case, Applicant is compelled to submit the following remarks as a supplement to his March 10, 2003 Response.

This Supplemental Response provides a detailed account of the discussions Applicant's counsel had with Examiner Langel during a recent personal Interview held on April

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14, 2003, and with Examiner Langel and his supervisor, SPE Stanley Silverman, during follow-up telephone interviews in two of Applicant's copending applications. [See Serial Nos. 09/110,678 and 09/362,693.] The shocking revelations divulged during these discussions have a direct bearing on the prosecution of this application, forcing Applicant to once again protest in the strongest terms possible the manner in which an anonymous group of PTO officials (*i.e.*, the "Secret Committee") has mishandled the examination of this and other BlackLight patent applications relating to Applicant's novel hydrogen technology.

Counsel was particularly distressed to learn that, after Examiner Langel met with Supervisor Silverman to advocate allowing the two other applications to issue as patents, his supervisor informed him that "allowance is not an option." Despite the Examiner's careful study of the overwhelming weight of the scientific data supporting allowance, his supervisor further instructed him to "make it appear as if you have authority [to allow the applications] and that you are in favor of full rejection."

Understandably, Examiner Langel felt uneasy having been asked to make representations on the record that were not true. He explained that, "for moral and ethical reasons," he had no choice but to allow himself to be removed from examining all assigned BlackLight applications. Although Supervisor Silverman admitted that the removal decision had been made "partially by [him] and partially by others," he would not reveal who those "others" were.

Applicant strongly objects to Examiner Langel's removal under these egregious circumstances and demands that the PTO reinstate him immediately and allow this and other allowable BlackLight applications to issue. The Secret Committee is duty bound to honor the representations and agreements made by Quality Assurance Specialist Douglas McGinty during the previous Interview held February 11, 2003, which declared that:

(1) Examiner Langel and the other Examiners of record have "full authority" to review the scientific data supporting lower energy states of hydrogen generated and furnished by independent third parties and, based on that review, to issue patents as deemed appropriate;

(2) Applicant should confer with the Examiners, either by telephone or in person, to review each assigned application on a claim-by-claim basis to ensure that the scientific data presented adequately supports the scope of the claims; and

(3) for those claims determined to be adequately supported by the data, a patent will issue; for any claims deemed to be inadequately supported, Applicant reserves the right to continue seeking that broader claim coverage in subsequent proceedings. [See March 10, 2003 Response]

In view of the many prior abuses that led to this short-lived "breakthrough"—documented most recently in Applicant's March 10 Response — U.S. Congressman David Wu sent his Senior Legislative Assistant, Ted Liu, to attend the February 11 Interview. Prior to the Interview, a senior PTO official alleged to Mr. Liu that there was no "Secret Committee." At the Interview, Mr. Liu witnessed not only Specialist McGinty's representation that Examiner Langel had the authority to allow BlackLight's applications, but the Examiner's unequivocal statement that the applications were, in fact, allowable and that he was prepared to issue Applicant his patents right then and there.

Despite those representations, an anonymous group of PTO officials has now decided that allowance is no longer an option in this or any other BlackLight case. Worse yet, this Secret Committee wanted to leave the false impression on the record that Examiner Langel had the authority to allow BlackLight's applications, but that he favored the rejection of claims over allowance.

In view of this unfortunate incident, Applicant is entitled to a complete accounting of events leading to Examiner Langel's removal, including identification of all persons involved in making that decision. In raising an objection to the removal with Supervisor Silverman, Applicant's counsel requested that he identify those decision-makers, but was told, "You figure it out!"

Counsel has now taken steps to do so and expressly reserves the right to further supplement the objections raised herein as additional facts come to light.

The April 14, 2003 Interview and Subsequent Discussions

In accordance with the above-mentioned representations and agreements made at the February 11, 2003 Interview, Applicant's counsel, Jeffrey Melcher and Jeffrey Simenauer, scheduled and attended the planned follow-up Interview with Examiner Langel on April 14, 2003. The express purpose of the April 14 Interview was to review the scientific data generated and furnished by independent third parties identified in Applicant's prior Responses as supporting lower energy states of hydrogen and to ensure that the data adequately supported the scope of the claims in the two BlackLight applications under consideration to secure their allowance.

Applicant had no reason to suspect that this approach, as agreed to during the prior February 11 Interview, was about to be completely scrapped. During the Interview, Examiner Langel once again reaffirmed his long-held opinion that the scientific data demonstrated the operability of Applicant's novel hydrogen technology, thus warranting patent protection. The Examiner's comments made clear that he had extensively reviewed Applicant's data prior to the Interview, as well as the summary statements characterizing that data appearing in the previously filed Responses essentially identical to the one filed March 10, 2003 in this case. Based on that review, Examiner Langel expressed several times during the Interview his willingness to allow the subject applications. Those views were confirmed by the Examiner in his summary of the interview, which stated that "[t]he participants presented data establishing the existence of lower-energy hydrogen." [See April 14, 2003 Interview Summary Form attached herewith.]

Examiner Langel, however, refrained from indicating allowance of any specific claims for two stated reasons. First, a few items of submitted data summarized in the prior Responses inexplicably could not be located in the PTO files. [See April 14, 2003 Interview Summary Form attached herewith.] The Examiner wanted time to confirm the data had been made of record and Applicant's description of its relevance. Second, despite Specialist McGinty's representation at the February 11 Interview that Examiner Langel had full authority to review the data and to issue claims in this case, the Examiner explained that he needed to advise him and Supervisor Silverman of his intention to do so.

Examiner Langel then recalled a recent visit to his office by Group Director Jacqueline Stone informing him that he did not have authority to issue Notices of Allowance, or to otherwise give indications of allowance, in any BlackLight applications. Director Stone instructed Examiner Langel that he would need Specialist McGinty's permission before so indicating allowance.

Examiner Langel did, however, note that Supervisor Silverman and Specialist McGinty had agreed before the February 11, 2003 Interview to allow claims if Applicant could show that his submitted scientific data was generated by independent third parties. The Examiner reassured counsel that he would present to his superiors the scientific data discussed at the April 14 Interview with a recommendation of allowance consistent with his past views.

Applicant's counsel agreed that it made sense to allow time for Examiner Langel to discuss the interviewed cases with his superiors and for counsel to resubmit the few missing items of scientific data, whereupon arrangement was made to continue with the personal Interview on the following day, April 15th. That morning, however, counsel received a telephone message from Examiner Langel informing him that the Interview had been canceled. The Examiner stated that Supervisor Silverman had removed him from the cases and that he was no longer assigned to any BlackLight applications.

Applicant's counsel immediately telephoned Examiner Langel for a further explanation of what had happened. The Examiner confirmed his removal following the meeting he had arranged with Supervisor Silverman to discuss the scientific data that had been the subject of the previous day's Interview and to advocate allowance of the claims in the two subject applications. Examiner Langel informed counsel that his supervisor refused to even look at the data and, in response to his recommendation of allowance, Supervisor Silverman told him "allowance is not an option." According to Examiner Langel he was then told: "make it appear as if you have authority [to allow the applications] and that you are in favor of full rejection."

Examiner Langel explained that, regrettably, he had no choice but to resign from further examination of BlackLight's applications. According to the Examiner, Supervisor Silverman gave

him the option of staying on, "but not really—I could not go on like this." He explained that "for moral and ethical reasons," he could no longer continue to examine BlackLight's applications.

Alarmed by this sudden turn of events, counsel called Supervisor Silverman the following day, April 16th, to object to Examiner Langel's removal and to seek his reinstatement. Supervisor Silverman confirmed that Examiner Langel would no longer be examining Blacklight's patent applications and that all cases were in the process of being consolidated and transferred to a new Examiner.

Counsel kindly requested that Supervisor Silverman explain why those cases were being transferred and who made that decision. He initially refused to discuss the matter, saying only that, "I am not going to be put on the stand and cross examined on this." Upon further prodding, Supervisor Silverman volunteered that "the decision was made partially by me and partially by others." He refused, however, to be more specific when asked to identify the "others" involved in the decision, stating "I am not going to discuss that. You can say that it was *my* decision."

Counsel then informed Supervisor Silverman of Applicant's intention to file the present objection to Examiner Langel's removal and to the consolidation and transfer of BlackLight's applications to a new Examiner. Counsel explained that Applicant had expended enormous amounts of time and money over a period of many years prosecuting BlackLight's patent applications before Examiner Langel and getting him up to speed on the claimed technology and the extensive scientific data confirming its operation. Counsel argued that it was unfair now to remove Examiner Langel and transfer all of BlackLight's cases to a new Examiner just to begin the process all over again. Supervisor Silverman would hear none of it, again stating, "I'm not going to discuss it."

Applicant's counsel made one last attempt to learn the identity of the other PTO officials responsible for taking that drastic action and their reasons for doing so. Supervisor Silverman again refused this request for information, snapping at counsel, "You figure it out!" Counsel then asked the Supervisor whom they might talk to so they could "figure it out" as he put it. Supervisor Silverman advised counsel, "Talk to whomever you want," but when asked whom specifically he had in mind, he again retorted, "I don't like to be cross-examined."

At the end of the conversation, Supervisor Silverman attempted to justify the PTO's extreme actions by claiming that it was in the "best interest" to transfer the applications. But, when asked by counsel whose best interest was being served by the transfer, he refused to answer. Instead, Supervisor Silverman offered a stunning revelation that Applicant's novel hydrogen technology was "beyond Examiner Langel's technical expertise" and that all of the BlackLight cases would be consolidated and transferred to another examiner with "more technical expertise." He would not elaborate on who this new, more highly qualified Examiner might be.

Needless to say, at no time during the 5 years Applicant has been prosecuting his patent applications before Examiner Langel—who has over 30 years of Patent Office experience—did his technical expertise ever come into question. Indeed, throughout this lengthy prosecution, counsel has been impressed with the Examiner's in-depth knowledge of chemistry and physics, as well as other scientific principles, underlying Applicant's novel hydrogen technology. That Supervisor Silverman would now raise Examiner Langel's technical competence as an issue at this late stage of the prosecution only heightens Applicant's suspicions as to the real motivation for removing Examiner Langel.

Immediately following the conversation with Supervisor Silverman, counsel telephoned Examiner Langel one last time to apprise him of the situation and to thank him for his many years of service in examining BlackLight's applications. Examiner Langel expressed regret over his removal from those cases and confirmed that he had "learned a lot about [BlackLight's] technology." The Examiner also expressed surprise that his expertise was now being called into question.

Examiner Langel shared counsel's exasperation over the situation. Counsel asked him if he knew of any other instances in which a PTO Examiner had been instructed to represent that he had authority to allow an application when, in fact, he had no such authority, and that he favored rejecting claims when he actually wanted to allow them. The Examiner's exact words were: "I've never seen anything like it."

Neither has Applicant's counsel and, in view of these unique circumstances, Applicant must once again strenuously object to the abusive treatment to which his applications have been subjected.

Demand for Information and Redress

In view of the above circumstances, Applicant respectfully demands that the Secret Committee provide certain information and redress, including:

- (1) a full accounting of the facts and circumstances that led to the decision to remove Examiner Langel from this and BlackLight's other applications and the transfer of those cases to a new Examiner, including, but not limited to, identification of all persons involved in that decision;
- (2) immediate reinstatement of Examiner Langel to his position as the Examiner of record in all BlackLight applications to which he had been previously assigned; and
- (3) the issuance of this and other allowable BlackLight applications in accordance with the representations and agreements made at the February 11, 2003 Interview.

Respectfully submitted,
Manelli, Denison & Selter, PLLC

By


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